IN THE HIGH COURT OF UTTARANCHAL AT NAINIAL

WRIT PETITON No. 313 (M/S) OF 2006

Chandra Prakash Ahluwalia S/o Sri Chaman Lal
R/o M.I.G., 19, Shivlok Colony,
Teh. & District Haridwar ..... Petitioners

Versus

1. 1. Kimiti Lal S/o Sri Bishambar Das R/o N-27, Shivalik Nagar, BHEL, Ranipur, Hardwar.
2. Uttar Pradesh Awas Vikas Parishad Rainpur mod, Hardwar through Property Management Officer, U.P. Awas Vikas Parishad, Hardwar.
3. Smt. Alka Chauhan W/o Sri Pradeep Kumar Chauhan R/o N-293, Shivalik Nagar, 3rd Phase, BHEL, Ranipur, Hardwar.

..... Respondents

05.04.2006

Sri Pankanj Miglani, learned counsel for the petitioner.
Learned Standing Counsel for the respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri Pankaj Miglani, Learned Counsel for the petitioner and Leaned Standing Counsel for the respondents.

By the present Writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 18.03.2006 passed by learned Civil Judge (J.D.), Hardwar by which the application moved by the petitioner under Order 1 Rule 10, has been dismissed.

Briefly stated according to the case of the petitioner, a suit was filed by the respondent no. 3 on 07.11.2005 against respondent no. 1 & 2 for a decree of mandatory injunction directing respondent no. 2 to demolish the structure raised by respondent no.1 against the sanctioned plan. Alongwith the aforesaid plaint, respondent No. 3 has also field an application under Order 39 Rule 1 & 2 of the Code of Civil Procedure for granting of interim injunction.

During the pendency of the suit, petitioner got information and found the suit and application filed under Order 1 Rule 10 of the Code of Civil Procedure and has filed application for his impleadment being a party. Petitioner has submitted that he is already in possession of one of shop as tenant therein and despite

of knowledge about this fact, the plaintiff has not made a party to the petitioner. The said application was dismissed on the ground that it is to be presumed that petitioner had the knowledge of the case since beginning. So the petitioner has no notice and, as such, the impugned order deserves to be set aside and the application filed by him for his impleadment as a party requires to be reconsidered.

In view of the above, the leaned Civil Judge (J.D.) while disposing of this application shall not be prejudiced by the interim order granted by this Court.

Copy of order shall be given within three days.

Subject to the aforesaid observations, writ petition is disposed of.

(Rajesh Tandon, J.)

05.04.2006
Jain